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CHIN CHYE & ORS v. CHEW AH HWA

HIGH COURT MALAYA, IPOH
SM KOMATHY JC
[CIVIL APPEAL NO: 11BNCVC-66-11-2015]
23 MAY 2016

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LAND LAW: *Occupation – Proprietary estoppel – Claim for vacant possession of land – Right of appellants to continue remaining on land – Spending monies on land due to assurance of indefinite right of residence – Whether equity arose to protect occupation – Whether doctrine of proprietary estoppel applied – Whether appellants acquired proprietary interest or equitable interest on land*

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EQUITY: *Estoppel – Proprietary estoppel – Claim for vacant possession of land – Right of appellants to continue remaining on land – Spending monies on land due to assurance of indefinite right of residence – Whether equity arose to protect occupation – Whether doctrine of proprietary estoppel applied – Whether appellants acquired proprietary interest or equitable interest on land*

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Persatuan Khiam Thye Chew ('Persatuan') acquired a piece of land ('property'). The property was held in the name of the trustees. The forefathers of the four appellants were each permitted to construct houses on the property. The appellants were the present occupants and tenants of the houses on the property. A monthly rental was paid by the appellants to the Persatuan. When the Persatuan became the registered owner of the property, the Chairman of the Persatuan ('respondent') wanted vacant possession of the property but the appellants refused and sought for monetary compensation. Thus, the respondent commenced an action against the appellants claiming for vacant possession and mesne profits. In defence, it was argued, amongst others, that the appellants and their forefathers had expended monies in building and renovating the houses with the encouragement of the Persatuan and the assurance that the appellants would be allowed to stay at the property for as long as they wanted. As such, the appellants alleged that there arose in the appellants favour an equity protecting their occupation of the houses such that the appellants could not be compelled to give up possession by the operation of the doctrine of proprietary estoppel. Accordingly, the appellants counterclaimed and sought for orders, *inter alia*, that the respondent be precluded from seeking vacant possession until their equity in the property was satisfied by monetary compensation. The Magistrate allowed the respondent's claim and dismissed the appellants' counterclaim on the grounds, *inter alia*, that the appellants were not the respondent's tenants. Hence, the appellants appealed. The issues that arose for determination was whether the appellants had acquired a proprietary interest or an equity in the property that had given them indefinite right of residence in the respondent's property.

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Held (allowing appeal in part):

(1) If a party spends money on the property of another then *prima facie* he has not acquired a proprietary interest in the property. However, the exception to this rule is the doctrine of proprietary estoppel. It arises in circumstances where an owner of land requests another, or allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there. The owner then seeks to take unconscionable advantage of the person by denying him the right or benefit which he expected to receive. (paras 11 & 17)

(2) The object of the remedy that might be ordered by a court of equity in a case of proprietary estoppel is not necessarily to make good the belief and expectation encouraged by the conduct of the owner, but to recompense the claimant for the expenditure or other detriment suffered as a consequence of reliance on the belief and expectation so encouraged. In the instant case, there has been a change of occupation between the previous occupiers and the present appellants and the equitable rights of the previous occupiers have been transmitted to them. Section 221(3) of the National Land Code provides that the maximum period for lease of part of a land is only 30 years. The equitable rights acquired by the appellants from their respective predecessors (if any) would therefore be only for the balance of the 30 years, which had expired in 1948, more than 58 years ago. (paras 19 & 21)

(3) There is also no evidence that the appellants have incurred expenditure that has increased the value of the premises to a very significant degree on reliance of any encouragement from the respondent. There is no basis to treat the appellants as having an entitlement to remain in possession for as long as they want or to make a cash payment as compensation. The equity or interest in the property is nil as the appellants and their forefathers have lived there since 1918, paying a paltry sum of RM29 as rent, and have since July 2014, occupying the premises rent free. In the circumstances, the appellants' appeal is allowed in part with costs. The award of mesne profits is set aside. (paras 22 & 23)

Case(s) referred to:

Crabb v. Arun District Council [1976] Ch 179 ***(refd)***
Dillwyn v. Llewelyn (1862) 45 ER 1285 ***(refd)***
Inwards v. Baker (1965) 2 QB 29 ***(refd)***
Khew Ah Bah v. Hong Ah Mye [1971] 1 LNS 49 HC ***(refd)***
Ramsden v. Dyson (1866) LR 1 HL 129 ***(refd)***
Repatriation Commission v. Tsourounakis (2007) 98 Ald 191 ***(refd)***
Siew Soon Wah & Ors v. Yong Tong Hong [1973] 1 LNS 137 PC ***(refd)***
SS Saw v. Siew Heen Yuen & Ors; Siew Boon Hong & Ors (Interveners) [2009] 2 CLJ 140 CA ***(refd)***
Suggitt v. Suggitt & Anor [2012] EWCA Civ 1140 ***(refd)***

Legislation referred to:
National Land Code, s. 221(3)

For the defendants/appellants - Thiru Mangai Krishnan; M/s Surendran & Thiru
For the respondent/plaintiff - Adam Teoh; M/s Ng Choo Beng R Naidu & Partners

Reported by Sandra Gabriel

JUDGMENT

SM Komathy JC:

[1] At the heart of this appeal is the question of whether the defendants (the appellants) who are tenants on the plaintiff's (the respondent) land have acquired a proprietary interest or an equity in the land that has given them indefinite right of residence in the plaintiff's land.

[2] Some background facts would assist in understanding the matrix of this case. More than 100 years ago, in 1913, Persatuan Khiam Thye Chew acquired a piece of land held under Geran 12775, Lot 3287, Bandar Teluk Intan, Daerah Hilir ("the property"). The property was held in the names of the trustees. The forefathers of the four defendants were each permitted to construct houses on the property. It was admitted in the statement of claim that the defendants are the present occupants and tenants of these four houses. A monthly rental of RM29 was paid by the defendants to Persatuan Khiam Thye Chew.

[3] Persatuan Khiam Thye Chew became the registered owner of the property in 2012. The plaintiff, Chew Ah Hwa, is the chairman of the Persatuan Khiam Thye Chew. In June 2013, the plaintiff intimated to the defendants that they wanted possession of the property but the defendants refused and sought compensation. On 24 July 2014, the plaintiff issued separate notices to quit on all the defendants to vacate the property 30 days from the date of the notice, the defendants failed to vacate and deliver vacant possession of the lands by the due date. The plaintiff then stopped collecting rent from the defendants.

[4] The plaintiff then commenced proceedings in the Teluk Intan Magistrate's Court to claim for possession and mesne profits. In their joint defence, the defendants alleged that the plaintiff was precluded from seeking possession as they had gained an equity to live on the property for as long as they wanted, as they and their forefathers had been induced to expend monies on the houses. Accordingly, they counterclaimed for an order that they be allowed to live on the property as long as they wished, and in the alternative, that the plaintiff be precluded from seeking vacant possession until their equity in the property was satisfied by monetary compensation.

[5] The Magistrate, after the conclusion of a full trial, allowed the plaintiff's claim for vacant possession and awarded a sum of RM1,600 as mesne profits from the date of the notice to quit till delivery of vacant

possession, and dismissed the defendants' counterclaim. The Magistrate in her grounds of judgment said that she accepted the plaintiff's argument that the defendants were not the plaintiff's tenants nor the persons occupying the houses and therefore allowed the claim. She said that these facts were supported by the rental receipts issued by the plaintiff and the admissions of the defendants. The defendants have appealed against the whole of the said decision.

The Arguments On Appeal

[6] In support of the appeal, counsel for the defendants relied on two principal grounds. First, the Magistrate had erred in holding that the defendants were not tenants. This finding was wrong in the light of the admission made by the plaintiff in the statement of claim.

[7] Secondly, it was argued that the defendants and their forefathers had expended monies in building and renovating the houses with the encouragement of the Persatuan Khiam Thye Chew and the assurance that they would be allowed to stay there for as long as they wanted. Based on these facts, there arose in the defendants' favour an equity protecting their occupation of the houses such that they cannot be compelled to give up possession by the operation of the doctrine of proprietary estoppel.

[8] The foundation of the defendants' case was the decision in *Khew Ah Bah v. Hong Ah Mye* [1971] 1 LNS 49; [1971] 2 MLJ 86. There, the defendant purchased a house which stood on land belonging to a chettiar. The plaintiff then purchased the land from the chettiar. Sometime thereafter, the defendant carried out major repairs and enlarged the house and incurred considerable expense. The plaintiff sought to recover possession. In allowing the claim, Choor Singh J elucidated:

> Where a landlord has let vacant land with permission to the tenant to build thereon and the tenant has expended money in putting up a building on the land it is not sufficient for the landlord to give a valid notice to quit in order to recover possession of his land. The tenant in such a case has a tenancy coupled with an equity - an equitable right to remain on the land so long as he continues paying the ground rent. Not only must the tenancy be validly determined but the equity must also be satisfied by the landlord before he can recover possession. It is for the court to say, on the facts and circumstances of the case, how the equity may be satisfied.

[9] In answer, counsel for the plaintiff took the position that even if the defendants were tenants, there was no evidence to show that they had acquired any equity in the property. The building was constructed by their forefathers and there was no evidence that they have incurred expenses to repair and/or renovate the same.

A **Issue 1: Admission In The Statement Of Claim**

[10] The first issue is focussed upon the plaintiff's departure from his admission in his statement of claim that the defendants were the tenants. The purpose of pleadings is to define the subject matter of the claim and defence, identify the issues and, thereby narrow the scope of the dispute between the
B parties to ensure that preparation and the trial itself are cost and time effective. Parties are thus bound by their pleadings and a judgment should be based on the issues raised by the pleadings. An amendment must be made to raise new or further issues. As no amendment was sought by the plaintiff to remove the admission in his pleading, he was bound by the same. I therefore
C agree with the defendants that the learned Magistrate was wrong to permit the plaintiff to depart from his admission in his pleading without an amendment made to withdraw this admission.

Issue 2: Proprietary Estoppel

D **[11]** The gravamen of the defendants' second complaint has to do with the doctrine of proprietary or equitable estoppel. It is a general rule that if a party spends money on the property of another then *prima facie* he has not acquired a proprietary interest in the property. There are exceptions to this rule and the doctrine of proprietary estoppel is one of them. Proprietary estoppel finds
E its origin in the 19th century cases of *Dillwyn v. Llewelyn* (1862) 45 ER 1285 and *Ramsden v. Dyson* (1866) LR 1 HL 129. It arises in circumstances where an owner of land requests another, or even allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there.

F **[12]** The doctrine of proprietary estoppel was applied in the four cases. In *Inwards v. Baker* (1965) 2 QB 29, a son had built a bungalow on his father's land and had lived in it thereafter in the expectation and belief that he would be allowed to remain there for his lifetime or for so long as he wished. The trustees of his father's will brought proceedings for the possession of the bungalow. In allowing the appeal, Lord Denning MR said:
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> … in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the
H money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do. In this case it is quite plain that the father allowed an expectation to be created in the son's mind that the bungalow was to be his home. It was to be his home for his life or, at all events, his home as long as he wished it to remain his home. It seems to me, in the light
I of that equity, that the father could not in 1932 have turned to his son and said: 'You are to go. It is my land and my house'. Nor could he at any time thereafter so long as the son wanted it as his home.

> Counsel for the plaintiffs put the case of a purchaser. He suggested that the father could sell the land to a purchaser who would get the defendant out; but I think that any purchaser who took with notice would clearly be bound by the equity. So here, too, the plaintiffs, the successors in title of the father, are clearly themselves bound by this equity. It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in what way the equity can be satisfied. I am quite clear in this case that it can be satisfied by holding that the defendant can remain there as long as he desires to use it as his home.

Danckwerts LJ added:

> … this is one of those cases of an equity created by estoppel, or equitable estoppel, as it is sometimes called, by which the person who has made the expenditure is induced by the expectation of obtaining protection, and equity protects him so that an injustice may not be perpetrated.

[13] In *Siew Soon Wah & Ors v. Yong Tong Hong* [1973] 1 LNS 137; [1973] 1 MLJ 133, the landlords claimed that they were entitled to possession of premises having given a valid notice to quit. The defendant alleged that it was agreed with the landlords that the tenancy should be permanent and that the landlord should not increase the rent as he liked or eject the tenant by force. The defendant had paid the sum of $8000 to the landlord as consideration. It was held by the Federal Court that the agreement was one for the grant of as long a lease as the law allowed, that is 30 years. The appellants appealed. In dismissing the appeal, the Privy Council held:

> In this case the respondent occupied the ground floor since February 1958 and paid rent therefor. In February 1958 he paid the sum of $8,000 to his landlord. He cannot have done that for a tenancy of short duration. It must have been paid in consideration of the tenancy described in the agreement of 1st June 1964 ... In these circumstances there arose in the respondent's favour an equity or equitable estoppel protecting his occupation of the ground floor for the period of thirty years, that is to say, until the 28th February 1988.

[14] In *Crabb v. Arun District Council* [1976] Ch 179, there was a dispute over a right of access promised by the defendants to the plaintiff. The English Court of Appeal held that the right of access to the defendant's land and a right of way along a road after he had been led to believe that he would be granted such a right of access, and had been encouraged to act to his detriment in selling part of his own land without any reservation over it of a right of way. Lord Denning MR in explaining the rationale underlying claims based on proprietary estoppel said:

> The basis of this proprietary estoppel – as indeed of promissory estoppel – is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as 'estoppel'. They spoke of it as 'raising an equity'. If I may expand what

A Lord Cairns LC said in *Hughes v. Metropolitan Railway Co* (1877) 2 App Cas. 439, 448: 'It is the first principle upon which all courts of equity proceed', that it will prevent a person from insisting on his strict legal rights – whether arising under a contract, or on his title deeds, or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.

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[15] In *SS Saw v. Siew Heen Yuen & Ors; Siew Boon Hong & Ors (Interveners)* [2009] 2 CLJ 140; [2009] 2 MLJ 214, the plaintiff's father purchased five lots of land on which there were 43 premises. The lands together with the premises were transferred into the name of the plaintiff sometime thereafter. The 43 defendants were monthly tenants and paid rent of RM45.90 a month.
C The plaintiff commenced proceedings to recover possession after having issued a notice to quit. The defendants relied on two defences, first, that the premises were rent controlled premises, and secondly that they had acquired a tenancy coupled with an interest by reason of having purchased their respective premises and/or by reason of having paid the rates and
D assessments in respect of the premises. The trial court entered judgment in favour of the plaintiff and directed the defendants to deliver vacant possession of the lands but the order of vacant possession was conditional upon payment of compensation to the defendants.

E **[16]** The plaintiff appealed and succeeded in setting aside the order for payment of compensation. The Court of Appeal held that there was no tenancy coupled with equity but only a monthly tenancy terminable with one month's notice which tenancy had been validly terminated by the notices to quit and, allowed the land owner's appeal. The following passage in the judgment of Zaleha Zahari JCA is illuminating:

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> The law relating to a tenancy coupled with an equity or equitable estoppel is founded on the statement of Lord Kingsdown in *Ramsden v. Dyson* (1866) LR 1 HL 129 which had been applied and adopted in Malaysia (see *Devi v. Francis* [1969] 2 MLJ 169; [1968] 1 LNS 34). The statement reads as follows:

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> > The rule of law applicable to the case appears to be this: If a man, under a verbal agreement with a landlord for a certain interest in land or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with
> H the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v. Mighell* 18 Ves 328, and, as I conceive, is open to no doubt …

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> > If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or as allowance for expenditure, then, if such hope or expectation has

> not been created or encouraged by the landlord, the tenant has no claim which any court of law or equity can enforce. This was the principal of the decision in *Pillay v. Armitage* 12 Ves 78, and like the decision in *Gregory v. Mighell*, seems founded on plain rules of reason and justice.
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> Tenancy with equity or equitable estoppel thus only arises if there is evidence that the plaintiff had required any of the defendants or interveners/defendants or allowed them to expend money on the said lands under an expectation created or encouraged by him that they would be able to remain there. In such a situation the landowner is prevented from taking any action contrary to that expectation. In the event that a tenancy coupled with equity is established, the landowner must first satisfy that equity before he can recover the land.
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> What is the evidence before the court? There is no evidence of the defendants nor the interveners/defendants having expended money on the inducement or encouragement of the plaintiff. The dealings if any, were all with the previous landowner, not the plaintiff. Of the two defendants who testified, defendant No 26 (DW1) no longer lives in premises No 76B. Likewise defendant No 38 (DW3) also does not live in premise No 80B. In fact these two defendants had admitted to renting out their respective premises and enjoying rental as contrasted with the position of the plaintiff, who received no rental subsequent to the issuance of the notice to quit ... the plaintiff had made it clear in his letter to all owners of the premises in exh P3 dated 27 May 1966 that 'Your building was built around 1950 under certain agreements and the period for the building to remain has expired long ago'. When the notices to quit were issued, it meant that the consent had been withdrawn. … We are also in agreement with the submission of the appellant's counsel that by reason the occupiers having occupied the said premises since 1950, the equity claimed has been satisfied by reason of this long occupation. The rents paid to the plaintiff was a paltry sum of RM49.50, with some enjoying rents from these premises and living elsewhere. In our view it would be unjust and inequitable for these defendants to be paid any compensation. If there is any equity it should be invoked in favour of the plaintiff.

[17] It is clear from the foregoing that mere expenditure on another party's property does not *ipso facto* give the person who spent the monies an equity in that property. An equity only arises upon the fulfilment of the requirements of proprietary estoppel in these circumstances. Where the owner of land induces, encourages or allows a person to believe that he has or will enjoy some right or benefit over the owner's property and, in furtherance and reliance upon this belief the person has acted to his detriment to the knowledge of the owner; and the owner then seeks to take unconscionable advantage of the person by denying him the right or benefit which he expected to receive.

[18] It is also clear that the court has a wide discretion of deciding how best to give effect to the equity, if any, on the basis that it would be unconscionable for a land owner to retain the benefit of the expenditure without appropriate compensation and avoid unjust enrichment. A wide range of reliefs may be granted as a matter of discretion. The extent to which the court would require the landowner to compensate a tenant as a term of being permitted to depart from his representation and to dispossess him and his family would depend on nature of the representation made.

[19] The object of the remedy that might be ordered by a court of equity in a case of proprietary estoppel is not necessarily to make good the belief and expectation encouraged by the conduct of the owner, but to recompense the claimant for the expenditure or other detriment suffered as a consequence of reliance on the belief and expectation so encouraged. In many cases where the requirements summarised above are satisfied, it will be possible for the owner of property to fulfil the equitable obligation owed only by conveyance or transfer of the interest, the expectation of which was encouraged by the owner's conduct. However, in other cases, it will be appropriate for a lesser relief to be awarded. For example, where the expenditure or detriment is minimal in comparison to the value of the property in question, it would be inappropriate and disproportionate to penalise the owner by depriving the owner of full ownership of the property. See *Repatriation Commission v. Tsourounakis* (2007) 98 Ald 191.

[20] In *Suggitt v. Suggitt & Anor* [2012] EWCA Civ 1140, the Court of Appeal discussed the relationship of proportionality between the level of detriment and the relief awarded. There, the deceased owned farmland and houses. He died living a will bequeathing his entire estate to his daughter. His son sought the farmland and a house he was occupying on basis of proprietary estoppel. His claim was allowed. Arden LJ, in dismissing an appeal against the said decision, said this at para. 44:

> The real issue over this proposition is on the basis of proportionality. Mr Jefferis's submission is put forward on the basis of para. 50 of the judgment of Walker LJ as he then was in *Jennings v. Rice* [2002] EWCA Civ 159, [2003] 1 FCR 501, [2003] 1 P & CR 100, which I will now set out:
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> > To recapitulate: there is a category of case in which the benefactor and the Claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor's house, either outright or for life. In such a case the court's natural response is to fulfil the Claimant's expectations. But if the Claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the Claimant has suffered, the court can and should recognise that the Claimant's equity should be satisfied in another (and generally more limited) way.

> In my judgment, this principle does not mean that there has to be a relationship of proportionality between the level of detriment and the relief awarded. What Walker LJ holds in this paragraph is that if the expectations are extravagant or 'out of all proportion to the detriment which the Claimant has suffered' the court can and should recognise that the Claimant's equity should be satisfied in another and generally more limited way. So the question is: was the relief that the judge granted 'out of all proportion to the detriment' suffered?

[21] Turning to the facts of the present case. They appear to me to be analogous to those in *SS Saw v. Siew Heen Yuen* (*supra*). In the instant case, there has been a change of occupation between the previous occupiers and the present defendants and the equitable rights of the previous occupiers have been transmitted to them. Section 221(3) of the National Land Code provides that the maximum period for lease of part of a land is only 30 years. The equitable rights acquired by the defendants from their respective predecessors (if any) would therefore be only for the balance of the 30 years, which had expired in 1948, more than 58 years ago.

[22] As in that case, there is also no evidence in the present instance that the defendants have incurred expenditure that has increased the value of the premises to a very significant degree on reliance of any encouragement from the plaintiff. In the circumstances, there is no basis to treat the defendants as having an entitlement to remain in possession for as long as they want or to make a cash payment as compensation to dispossess them and their families. The equity or interest in the property is nil as the defendants and their forefathers have lived there since 1918, paying a paltry sum of RM29 as rent, and have since July 2014, occupying the premises rent free.

Conclusion

[23] For the reasons given, I allow the defendants' appeal in part. The award of mesne profit is set aside. The defendants to pay the plaintiff costs of RM5000 as costs here and below.